

**MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

Allen v. United States

Case No. 3:04-cv-00131-JKS

By: THE HONORABLE JAMES K. SINGLETON

Deputy Clerk: Linda Christensen, Case Management: 677-6104*

PROCEEDINGS: ORDER FROM CHAMBERS

The joint proposed pretrial order submitted by the parties at Docket No. 86 is **ACCEPTED** and will be adopted as the final pretrial order in this case. As such, it shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice. The parties should be prepared to discuss it at the final pretrial conference on Monday, June 11, 2007.

IT IS SO ORDERED.

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge.

DATE: June 11, 2007

* ALL INQUIRIES REGARDING THE SCHEDULING OR CALENDARING OF THIS CASE SHOULD BE DIRECTED TO THE ABOVE INDICATED CASE MANAGER.

Any request for other information or for clarification, modification, or reconsideration of this Order, or for extension of time must be made in the form of a motion. See FED. R. CIV. P. 7(b)(1); D. Ak. LR 7.1(l). No one should telephone, fax, or write to chambers regarding pending cases. The Judge's secretary and law clerks are not permitted to discuss any aspect of this case, provide any information, or communicate with any person, including litigants, lawyers, witnesses, and the general public regarding pending cases.

1 ly
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4 E-mail: _____
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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ALASKA

10 KIMBERLY ALLEN, Personal)
Representative of the Estate of TODD)
11 ALLEN, Individually, on behalf of)
the Estate of TODD ALLEN, and on)
12 behalf of the Minor Child, PRESLEY)
GRACE ALLEN,)

13 Plaintiff,)
)

14 vs.)
)

15 UNITED STATES OF AMERICA,)
)

16 Defendant.)
)

17) PRETRIAL ORDER

18 I. PARTIES

19 The parties are Kimberly Allen, on behalf of herself, her minor daughter, Presley Grace
Allen, and the Estate of Todd Allen, and the United States.

20 Kimberly Allen was married to the deceased, Todd Allen.

1 The United States, pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C.
2 §§ 2671-80, is deemed to employ the Alaska Native Medical Center ("ANMC") health care
3 providers whose care, Mrs. Allen contends, was negligent and caused the death of Todd Allen.

4 II. JURISDICTION

5 This court has jurisdiction under the FTCA. Jurisdiction is not disputed.

6 III. SCHEDULE OF TRIAL

7 Trial is scheduled to commence on June 25, 2007 at the Federal District Court in
8 Anchorage, Alaska. Because this case falls under the FTCA, it will be a court-tried case.

9 IV. NATURE OF ACTION

10 This is a medical malpractice case wherein the plaintiff seeks damages for the alleged
11 wrongful death of Todd Allen and for alleged personal injuries sustained by Mr. Allen and
12 herself. Alaska substantive law applies and federal procedural law applies.

13 V. LEGAL ISSUES ALREADY DECIDED BY THE COURT

14 The Court allowed Mrs. Allen to amend her complaint to add a claim of negligent
15 infliction of emotional distress but did not determine whether or not the claim was barred by
16 the statute of limitations [dkt # 27]. The statute of limitations issue was addressed in Mrs.
17 Allen's trial brief [dkt # 79].

18 The Court denied plaintiff's motions in limine concerning shifting the burden of proof
19 and limiting the testimony of defendant's experts, pending the Court's review of the evidence
20 presented at trial. [dkt # 76].

VI. JOINT STATEMENT OF ISSUES

This is a medical malpractice case and under Alaska law, Mrs. Allen has the burden of proving by a preponderance of the evidence the following:

(1) The degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing;

(2) That the ANMC health care providers lacked this degree of knowledge or skill or that the ANMC health care providers failed to exercise this degree of care.

(3) That the negligence of the ANMC providers was the legal cause of Todd Allen's suffering and death and the cause of Kim Allen's injuries.

AS 9.55.540 (1976).

As argued in plaintiff's Motion for Ruling Regarding Proof of Causation, she will be seeking to shift the burden of proof regarding causation onto the United States once she proves that the standard of care was breached by the Government. This issue has been briefed by both parties. [Dkt ## 41, 42, 53, 56].

With respect to Mrs. Allen's claim for negligent infliction of emotional distress, Mrs. Allen has the burden of proving by a preponderance of the evidence that she suffered emotional distress as a result of her being with her husband in the Microtel room and seeing him go into respiratory arrest with what she believed to be blood coming from his mouth.

VII. STIPULATED STATEMENT OF FACTS

1. On April 19, 2003, Donna Fearey was an Advanced Nurse Practitioner ("ANP") employed by ANMC.

1 2. On April 19, 2003, Patricia Ambrose was a Registered Nurse employed by
2 ANMC.

3 3. On April 19, 2003, Mr. Todd Allen was 36 years old.

4 4. Mr. Allen's birth date is March 30, 1967.

5 5. Kim Allen and Todd Allen were married on June 8, 2003.

6 6. On April 19, 2003, Mrs. Allen was approximately three months pregnant with
7 Mr. Allen's child.

8 7. On April 19, 2003, Mr. Allen was employed full time for TCC.

9 8. Mr. Allen had been employed by TCC since 2000.

10 9. Early on the morning of April 19, 2003, Mr. Allen presented at the Alaska Native
11 Medical Center Emergency Department ("ANMC ED") with his wife, Kimberly Allen.

12 10. Nurse Ambrose is the nurse that triaged Mr. Allen the morning of April 19, 2003.

13 11. Nurse Ambrose triaged Mr. Allen to the ANMC Urgent Care Center ("UCC").

14 12. The ANMC Emergency Department has two sections, the Emergency Room
15 ("ER") and the UCC.

16 13. The ER is staffed by physicians and registered nurses.

17 14. The UCC is staffed by ANPs, physician's assistants, and Licensed Practical
18 Nurses.

19 15. ANP Donna Fearey was the care provider at the UCC who evaluated Mr. Allen
20 the morning of April 19, 2003.

 16. Mr. Allen was discharged from ANMC at approximately 8:15 a.m. that morning.

1 17. Mr. Allen was in a pedestrian/motor vehicle accident on November 22, 1999,
2 where he was a pedestrian hit by a motor vehicle.

3 18. Mr. Allen suffered a jaw fracture as a result of the November 1999 automobile
4 accident.

5 19. Mr. Allen had surgery on his jaw the same day as the accident.

6 20. Mr. Allen's right jaw was replaced in a second surgery on June 2001.

7 21. Mr. Allen had entered into a chronic pain contract with ANMC in January 2003.

8 22. Mr. Allen had received a refill of his prescription pain medications on April 18,
9 2003.

10 23. At 3:47 p.m. on April 19, 2003, Mrs. Allen called ANMC about her husband.

11 24. At about 5:11 p.m. on April 19th, Mrs. Allen called 911 about her husband.

12 25. Mr. Allen was taken to Providence Alaska Medical Center ("PAMC") where he
13 was seen by emergency room physician, Dr. Susan Dietz.

14 26. A CT scan was taken of Mr. Allen's brain at approximately 6:47 p.m.

15 27. Mr. Allen was admitted to PAMC by Dr. Loretta Lee.

16 28. Mr. Allen was declared dead on April 20, 2007.

17 29. Mr. Allen is survived by his wife, Kimberly Allen, and his minor daughter,
18 Presley Grace Allen.

19 30. Kimberly Allen's birth date is May 16, 1970.

20 31. Presley Grace Allen's birth date is October 18, 2003.

VIII. CONTESTED ISSUES OF FACT AND LAW

A. The Following Are the Issues of Fact to Be Tried and Decided:

Issue 1: Did Nurse Ambrose, the triage nurse, breach the standard of care.

Plaintiff contends: Nurse Ambrose did not exercise the degree of care ordinarily exercised when she triaged Mr. Allen to the UCC to see a mid-level practitioner when the standard of care required that he be triaged to see an emergency room physician.

Defendant contends: Nurse Ambrose is an experienced triage nurse and it was appropriate for her to use her experience to assess the patient's need to see a physician versus an ANP.

Issue 2: What information was communicated to the ANP on the morning of April 19th by Todd Allen.

Plaintiff contends: Mr. Allen conveyed that, among other things, he had a severe headache associated with nausea and vomiting.

Defendant contends: Mr. Allen conveyed, among other things, that he had ear and jaw pain that was similar to his chronic pain.

Issue 3: Did ANP Fearey breach the standard of care.

Plaintiff contends: ANP Fearey breached the standard of care by not ruling out a subarachnoid bleed.

Defendant contends: ANP Fearey did not breach the standard of care and reasonably concluded that Mr. Allen was experiencing an episode of his chronic pain.

1 **Issue 4:** Did any negligence on the part of Nurse Ambrose and/or ANP Fearey cause
2 Todd Allen's injury and death.

3 **Plaintiff contends:** The triage decision ensured that Mr. Allen would be seen by
4 a mid-level practitioner; had Mr. Allen been seen by a physician his true condition, a
5 subarachnoid bleed, would have been diagnosed and Mr. Allen would have been admitted to
6 the hospital and provided appropriate medical care and would not have suffered to the extent
7 he did on April 19th and he would have lived with a good outcome; alternatively had ANP
8 Fearey's care met the standard of care, Mr. Allen's true condition would have been diagnosed
9 and he would not have suffered to the extent he did and he would have lived with a good
10 outcome.

11 **Defendant contends:** Mr. Allen had a catastrophic subarachnoid hemorrhage ("SAH"),
12 due to bleeding or rebleeding from a ruptured cerebral aneurysm in the early afternoon of
13 April 19, 2003, and that this SAH caused his coma and death. Even assuming that Mr. Allen
14 had been diagnosed by ANP Fearey or by an emergency room doctor as possibly having a
15 SAH during the morning of April 19th at ANMC, Mr. Allen could not have been examined at
16 ANMC, then transported to another Anchorage hospital for diagnostic studies, and then
17 medevaced to Seattle for surgical treatment before he suffered his catastrophic SAH and coma,
18 in the afternoon of 19th.

19 **Issue 5:** If there was negligence that caused Todd Allen's injuries and death and Mrs.
20 Allen's injury, what would be the appropriate compensation.

1 **Plaintiff contends:** The economic losses are approximately \$1,500,000. In
2 addition, there are three non-economic damages caps that apply as set forth in Mrs. Allen's
3 trial brief (for Mr. Allen's survival claim, for his death and for Mrs. Allen's negligent infliction
4 of emotional distress claim) [dkt # 79].

5 **Defendant contends:** Mr. Allen's estimated past and future economic losses are
6 approximately \$1,020,000, and that any damages award should be reduced by the past and
7 future Social Security benefit payments received by Mrs. Allen and Presley Allen as a result of
8 Mr. Allen's death, pursuant to AS 09.55.548(b). Defendant contends that the noneconomic
9 damages limit in AS 09.17.010 applies to all claims for the alleged injuries and death of
10 Mr. Allen and that the alleged multiple injuries sustained by Mr. Allen shall be treated as a
11 single injury under AS 09.17.010(d).

12 **B. The Following Are the Issues of Law To Be Tried and Determined:**

13 **Issue 1:** What is the standard of care that applies in this case.

14 **Plaintiff contends:** There is one standard of care that applies to the ANMC
15 emergency department in this case whether or not Mr. Allen was seen by a physician or an
16 ANP.

17 **Defendant contends:** A higher standard of care may apply to emergency room
18 physicians than to an ANP.

19 **Issue 2:** Should the burden of proof regarding causation be shifted to the government if
20 and when the plaintiff proves that the standard of care was breached in the case

1 **Plaintiff contends:** The burden should be shifted as detailed in her Motion In
2 Limine. [dkt ## 41, 42, 56].

3 **Defendant contends:** The burden of proof should remain with the plaintiff as
4 provided in AS 09.55.540 and argued in Defendant's opposition to plaintiff's Motion in
5 Limine [dkt # 53].

6 **Issue 3:** Did the government owe Mrs. Allen a duty of care with respect to her claim
7 for negligent infliction of emotional distress.

8 **Plaintiff contends:** As a matter of law, the government owed Mrs. Allen a duty
9 of care in this case.

10 **Defendant contends:** The question of legal duty and legal requirements for Mrs.
11 Allen's claim for negligent infliction of emotional distress depend on the evidence to be
12 presented at trial and cannot be determined as a matter of law.

13 **IX. GENERAL QUESTIONS FOR THE JURY, VOIR DIRE JURY**

14 **QUESTIONNAIRE, PRELIMINARY JURY INSTRUCTIONS, 15 JURY INSTRUCTIONS, AND SPECIAL VERDICT FORMS**

16 This is not applicable in this case.

17 **X. EXHIBITS**

18 The parties will likely have resolved their differences in exhibits relating to medical
19 records by the pretrial conference. Plaintiff continues to object to the admission of Nurse
20 Fearey's personnel file.

PLAINTIFF'S EXHIBITS

It is difficult for Plaintiff to accurately determine the order in which her exhibits will be offered at trial. The use and order of the exhibits will depend on the nature of the testimony of the witnesses. With this limitation, she expects that her exhibits will be offered in the following general order:

EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-13	ANMC ED/Urgent Care Center Triage Policy [ANMC 0894- 0904]		X	
P-3	Triage/ER record. 4/19/03 [ANMC 1]		X	
P-14	ANMC ED/UCC Regarding Telephone Advice [ANMC 0905-0907]	X		
D-1	Todd Allen Medical Records	X		
D-1A	Todd Allen Medical Records	X		
P-42	DVD deposition of Patricia Ambrose	X		
D-33	Deposition of Patricia Ambrose, RN	X		
P-17	ED/UCC Nurse Practitioner Job Description Signed 1998 [ANMC 0796-800]		X	
P-18	ED/UCC Nurse Practitioner Job Description Signed 2000 [ANMC 0792-795]		X	
D-8	C.V. of Donna Fearey		X	

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1126 Highland Avenue
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Facsimile: (360) 782-4358

EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-4	Emergency Visit Record Transcribed by Donna Fearey. [ANMC 0755]		X	
D-42	Deposition of Donna Fearey, A.N.P.	X		
P-5	Dr. Dietz ER Report [Allen (Providence) 59 – 62]		X	
D-38	Deposition of Dr. Susan Dietz	X		
D-10	Expert Report of Dr. Robert Cantu	X		
D-18	Expert Report of Dr. Frank Mannix	X		
P-15	ANMC ER Department Statistics 4/19/03 [ANMC 1004 – 1014]	X		
P-16	ANMC Workload ER/UCC April 2003 [ANMC 1015]	X		
P-7	Dr. Lee Dictated Note [Allen (Providence) 21 – 23]		X	
P-6	Dr. Downs Dictated Consult [Allen (Providence) 19-20]		X	
P-9	Providence Progress Notes [Allen (Providence) – 25 – 30]		X	
P-8	Dr. Lee Dictated Discharge Summary [Allen (Providence) 17 – 18]		X	
D-43	Deposition of Roberta Lee	X		
D-2	Providence Alaska Medical Center CT Scan Film and Report for Todd Allen		X	
P-23	Letters of Administration for Todd Allen's Estate		X	

EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-11	Kimberly Allen Cell Phone Record 4/19/03.		X	
P-24	Wedding Photo of Todd and Kimberly Allen [Photo – 3]		X	
P-25	Wedding photo of Todd Allen and family [Photo – 1]		X	
P-26	Wedding photo – Todd and Kim Allen and family [Photo – 5]		X	
P-27	Photo of Todd Allen/photo Kim and Presley Allen [Photo – 4]		X	
P-28	Photo of Todd with family member. [Photo – 6]		X	
P-12	Death Certificate for Todd Allen. [Allen (death cert.) 1]		X	
D-21A	Revised C.V. of Elda Ramirez		X	
D-20	Expert Report of Elda Ramirez, R.N.	X		
D-11	C.V. of Dr. Robert Cantu		X	
D-10	Expert Report of Dr. Robert Cantu	X		
D-27	C.V. of Susan Shott, Ph.D.		X	
D-26	Expert Report of Susan Shott, Ph.D.	X		
D-57	Addendum to Expert Report of Susan Shott	X		
D-14	Expert Report of John Finch, Ph.D.	X		

EXH #	DESCRIPTION	IDEN	ADM	OBJ
D-15	C.V. of John Finch, Ph.D.		X	
P-19	Todd Allen's Tax Return 2000 [IRS 0511-0519]		X	
P-20	Todd Allen's Tax Return 2001 [IRS 0520-0526]		X	
P-21	Todd Allen's Tax Return 2002 [IRS 0527-0532]		X	
P-22	Todd Allen's Tax Return 2003 [IRS 0533- 0538]		X	
P-40	Laborer's Union Wage Rates 2002 – 2007 [2 – 10]	X		
P-39	Todd Allen Employment Records Excerpt	X		
P-30	John Finch's Table of Calculations of Past and Future Economic Losses	X		
P-1	Mission Statement of ANMC Emergency Department. [ANMC 0946]		X	
P-2	Corporate Goals of South Central Foundation in effect in April, 2003 relating to the ANMC Urgent Care Center. [ANMC 0947 – 0949]		X	
P-36	ANMC Staff/Provider Scheduling 1/03 - 4/03 [ANMC 0965, 0993]	X		
P-37	UCC/ER number of patients seen 2000-2003 [ANMC 1121]	X		
P-38	UCC provider schedule [ANMC 1111]	X		
D-9	C.V. of Dr. Richard Brodsky		X	

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EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-34	Exhibit 4 to Nurse Duntze's Deposition	X		
D-44	Deposition of Dr. Michael Levy	X		
D-53	Deposition of Dr. Ronald Shallat	X		
P-35	Aneurysm Illustration	X		
P-43	DVD deposition of Nurse Duntze	X		
D-49	Deposition of Dr. Richard Rubenstein	X		
P-31	Exhibit 3 to Dr. Rubenstein's Deposition	X		
P-32	Exhibit 13 to Dr. Rubenstein's Deposition	X		
P-33	Exhibit 14 to Dr. Rubenstein's Deposition	X		

DEFENDANT'S EXHIBITS

It is difficult for Defendant to accurately determine the order in which Defendant's exhibits will be offered at trial. The use and order of the exhibits will depend on the nature of the testimony of the witnesses. With this limitation, Defendant expects that its exhibits will be offered in the following general order:

Exhibit D-1 Id
Exhibit D-1A Id
Exhibit D-2 Adm

Exhibit D-3 Id

Exhibit D-4 Adm

Exhibit D-5 Adm

Exhibit D-6 Adm

Exhibits D-8 to D-29 are the C.V.'s (Adm) and reports (Id) for the respective witnesses and expert witnesses. Defendant expects that these exhibits may be used or offered during the testimony of the respective witnesses.

Exhibits D-30 to D-57 are the deposition testimony and deposition exhibits (all Id) for the respective witnesses and expert witnesses. Defendant expects that these exhibits may be used or offered during the testimony of the respective witnesses.

Exhibit D-58 Id

XI. WITNESS LISTS

PLAINTIFFS' WITNESSES

Plaintiff intends to call the following witnesses in the order stated to the extent possible:

1. Patricia Ambrose
25 Third Avenue, SW
Cut Bank, MT 59427
Phone: (406) 873-2049

Ms. Ambrose is a fact witness. Ms. Ambrose is the registered nurse who was working at the ANMC ED the morning of April 19, 2003, and who evaluated and triaged Todd Allen. Ms. Ambrose's care is at issue in this case and she will testify regarding her decision the morning of April 19, 2003 to triage Todd Allen to the UCC to see a mid-level practitioner

1 as opposed to triaging Mr. Allen to see an emergency room physician on the Emergency Room
2 side of the ED.

3 Ms. Ambrose will be called at trial by videotaped deposition.

- 4 2. Donna Fearey, ANP
5 c/o Gary Guarino
6 U.S. Attorney's Office
7 District of Alaska
8 222 W. 7th Avenue, Room 253
9 Anchorage, AK 99513
10 Phone: (907) 271-5071

11 Ms. Fearey is a fact witness and the mid-level practitioner who evaluated Todd
12 Allen on the morning of April 19, 2003 at ANMC who, plaintiff contends, failed to appreciate
13 the significance of Mr. Allen's presenting symptoms the morning of April 19, 2003 and who
14 failed to rule out the fact that Mr. Allen had a subarachnoid hemorrhage. Ms. Fearey will
15 testify regarding her examination of Mr. Allen the morning of April 19, 2003.

16 Ms. Fearey will be called at trial.

- 17 3. Susan Dietz, MD
18 c/o Howard Lazar
19 Delaney, Wiles, Hayes, Gerety, Ellis & Young, Inc.
20 1007 W. 3rd Avenue, Suite 400
Anchorage, AK 99501
Phone: (907) 279-3581

Dr. Dietz is a fact witness and the emergency room physician at PAMC who
provided emergency services to Todd Allen after Mr. Allen was transported to PAMC by
paramedics after 5:00 p.m. on April 19, 2003. Dr. Dietz will testify regarding her care of
Mr. Allen and the statements made by Mrs. Allen regarding her husband's condition that day
which were made for the purposes of medical diagnosis and/or treatment.

1 Dr. Dietz will be called at trial in person or by deposition.

- 2 4. Frank Mannix, M.D.
1238 Rubenstein Avenue
3 Cardiff By The Sea, CA 92007
Phone: (760) 942-8652

4 Dr. Mannix is an expert in emergency room medicine and will testify regarding
5 the standard of care applicable to the triage nurse and mid-level practitioner in this case and
6 how Nurse Ambrose's triage decision was negligent, how Nurse Fearey's evaluation and care
7 of Mr. Allen was negligent and that the advice given to Mrs. Allen on the phone by ANMC
8 personnel in the afternoon of April 19, 2003 was negligent. Dr. Mannix was deposed and will
9 testify to any other issues discussed in his deposition.

10 Dr. Mannix will be called at trial.

- 11 5. Loretta Lee, MD
c/o Howard Lazar
12 Delaney, Wiles, Hayes, Gerety, Ellis & Young, Inc.
1007 W. 3rd Avenue, Suite 400
13 Anchorage, AK 99501
Phone: (907) 279-3581

14 Dr. Lee is a fact witness and an internal medicine physician who admitted Todd
15 Allen to PAMC on April 19, 2003 and who attended to him until his death on April 20, 2003.
16 Dr. Lee will testify regarding her care of Mr. Allen, Mr. Allen's condition, his death and the
17 statements made by Mrs. Allen regarding her husband's condition that day which were made
18 for the purposes of medical diagnosis and/or treatment.

19 Dr. Lee will likely be called at trial.

20
J PRETRIAL ORDER

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1 6. Kimberly Allen
2 c/o Friedman, Rubin & White
3 1126 Highland Avenue
4 Bremerton, WA 98337
5 Phone: (360) 782-4300
6 Attorney Client Privilege Applies

7 Kim Allen is the plaintiff in the case. She is the personal representative of her
8 deceased husband's estate and the parent of Presley Grace Allen. Mrs. Allen is a fact witness
9 who accompanied her husband, Todd Allen, to ANMC on the morning of April 19, 2003.
10 Mrs. Allen will testify regarding the events on the evening of April 18th, the events
11 surrounding her husband's visit to the ANMC Emergency Department on April 19th, the
12 events surrounding her call to ANMC at around 3:47 p.m. later that day, her experience dealing
13 with her husband going into respiratory arrest in their hotel room and what has happened as a
14 result of her losing her husband and the father of her only daughter.

15 Ms. Allen will be called at trial.

16 7. Elda Ramirez, PhD, MSN, RN, FNP, CS, CEN
17 Assistant Professor of Nursing, Clinical
18 The University of Texas
19 School of Nursing at Houston
20 501 W. 25th Street
 Houston, TX 77008
 Phone: (713) 500-2162

 Dr. Ramirez is an expert in emergency room nursing and may testify regarding
the standard of care applicable to the triage nurse and nurse practitioner and the fact that the
standard of care was breached by Nurse Ambrose and Nurse Fearey.

 Dr. Ramirez may be called at trial by videotaped deposition.

1 8. Dr. Robert Cantu, M.D.
2 John Cuming Building
3 131 ORNAC – Suite 820
4 Concord, MA 01742
5 Phone: (978) 369-1386

6 Dr. Cantu is an expert in neurosurgery and will testify regarding his opinions that
7 a CT taken the morning of April 19th would have discovered Mr. Allen's brain bleed and that
8 had his bleed been discovered, how he would have been medically treated and that he, more
9 likely than not, would have had a good outcome. Dr. Cantu will testify that the CT scan taken
10 at PAMC at 6:47 p.m. on April 19th revealed that Mr. Allen's brain showed extensive swelling
11 which more likely than not had been progressing throughout the day of April 19th and which
12 could have been prevented/treated had Mr. Allen's subarachnoid bleed been diagnosed the
13 morning of April 19, 2003.

14 Dr. Cantu will be called via videotaped deposition.

15 9. Susan Shott, Ph.D.
16 Statistical Communications
17 7707 Shields Road
18 Harvard, IL 60033
19 Phone: (312) 203-3805

20 Dr. Shott is an Associate Professor in the Department of Medicine at Rush
University Medical Center and is an expert in medical biostatistics and statistical analysis.
Dr. Shott will testify that Mr. Allen's probability of survival with independent function had
Mr. Allen's subarachnoid bleed been diagnosed the morning of April 19, 2003 was over 90%.
Dr. Shott will also testify regarding Mr. Allen's probable life expectancy and work-life
expectancy had his subarachnoid bleed been timely diagnosed.

1 Dr. Shott will be called at trial.

2 10. Lloyd Kompkoff
3 P.O. Box 2902
4 Valdez, AK 99686
5 Phone: (907) 834-6727

6 Mr. Kompkoff is a fact witness. Mr. Kompkoff was supervising Mr. Allen at his
7 job at TCC at the time of Mr. Allen's death. Mr. Kompkoff was also friends with Mr. and
8 Mrs. Allen. Mr. Kompkoff will testify about Mr. Allen's work abilities and skills, his work
9 ethic, as well as his contributions to his family and the community as a fisherman, provider,
10 husband, friend and mentor.

11 11. Dr. John L. Finch, Ph.D.
12 2018 163rd Street, S.E.
13 Millcreek, WA 98012
14 Phone: (206) 363-1640

15 Dr. Finch is an expert economist and will testify regarding the economic losses in
16 this case.

17 Dr. Finch will be called at trial unless the parties reach a consensus regarding the
18 economic losses in the case.

19 11. Myra Allen
20 P.O. Box 1836
Cordova, AK 99574
Phone: (907) 424-3684

Myra Allen is Todd's mother and a fact witness. Mrs. Allen may testify about
Todd and Kim's relationship, and the losses experienced by Kim, the family and the
community as a result of Todd's death.

Myra Allen will likely be called at trial.

PRETRIAL ORDER

FRIEDMAN, RUBIN & WHITE

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Facsimile: (360) 782-4358

DEFENDANT'S WITNESSES

Witnesses That Shall Be Called At Trial

1. Kimberly Allen
c/o Friedman, Rubin & White
1126 Highland Avenue
Bremerton, WA 98337
Phone: (360) 782-4300

Defendant expects that it will question Mrs. Allen when she is called as a witness during Plaintiff's case-in-chief. Defendant reserves the right to recall Mrs. Allen in its defense case. Mrs. Allen is expected to testify regarding Mr. Allen, his prior accident and medical history, the events in April 2003 that are involved in this case, and Plaintiff's negligence and damages claims. See Mrs. Allen's prior discovery depositions.

2. Pat Ambrose, R.N.
25 Third Avenue, South West
Cut Bank, Montana 59427
Phone: (406) 873-2049

Defendant expects that it will question Nurse Ambrose when she is called as a witness during Plaintiff's case-in-chief. Defendant reserves the right to call Nurse Ambrose in its defense case. Nurse Ambrose is expected to testify by deposition or telephonically. Nurse Ambrose has been deposed and she is expected to testify regarding the issues raised in her deposition including her education, training, experience, and duties as a registered nurse, her experience, duties, and practices as a registered nurse working in ANMC's emergency department, her knowledge and experience regarding patient triage and symptoms of chronic pain or subarachnoid hemorrhage, and her knowledge, observations, and actions relating to her assessment of Mr. Allen's condition and her triage of Mr. Allen at ANMC on April 19, 2003.

- 1 3. Donna Fearey, A.P.N.
2 State of Alaska Nurse Epidemiologist
3 Anchorage, Alaska
4 Phone: (907) 748-2687

5 Defendant expects that it may question ANP Fearey when she is called as a
6 witness in Plaintiff's case-in-chief. Defendant reserves the right to call ANP Fearey in its
7 defense case. ANP Fearey has been deposed and she is expected to testify regarding the issues
8 raised in her deposition including her education, training, experience, and duties as a
9 Registered Nurse and an Advanced Nurse Practitioner, her experience, duties, and practices as
10 an Advanced Nurse Practitioner working in ANMC's emergency department, her knowledge
11 and experience regarding patient triage and the symptoms of chronic pain or subarachnoid
12 hemorrhage, and her knowledge, observations, and actions relating to her exam, interview, and
13 assessment of Mr. Allen at ANMC on April 19, 2003.

- 14 4. Dr. Richard Brodsky
15 Medical Directory ANMC Emergency Department
16 Alaska Native Medical Center
17 4315 Diplomacy Drive
18 Anchorage, AK 99508
19 Phone: (907) 563-2662

20 Dr. Brodsky has been deposed and he is expected to testify regarding the subjects
and medical issues that he was questioned about at his deposition, including his medical
training and experience, his duties and experience as ANMC Medical Director and physician
for the Emergency Department, the staffing and operation of ANMC's emergency care and
urgent care clinic, the procedures for intake, triage, examination, and treatment of patients in
the ANMC Emergency Department, his knowledge and experience regarding ANP Fearey's

1 skills and work at the ANMC urgent care clinic, the information in the ANMC medical records
2 regarding Mr. Allen's intake, triage, exam, and assessment on April 19, 2003, the medical
3 technology and diagnostic or treatment procedures available at ANMC in April 2003, the
4 practices and procedures at ANMC for the assessment and treatment of patients suspected of
5 having a subarachnoid hemorrhage or aneurysm, including the transfer and medevac of
6 patients to other medical facilities, and ANMC's chronic pain program.

7 5. Susan Edwards, L.P.N.
Alaska Native Medical Center
4315 Diplomacy Drive
8 Anchorage, AK 99508
9 Phone: (907) 563-2662

10 Nurse Edwards has been deposed and she is expected to testify regarding the
11 issues raised in her deposition including her education, training, experience, and duties as a
12 Licensed Practical Nurse, her experience, duties, and practices as an L.P.N. working in
13 ANMC's Emergency Department, and her knowledge, observations, and actions relating to her
14 contacts with Mr. Allen and his discharge from ANMC on April 19, 2003.

15 6. Dr. Michael Levy (Expert Witness)
Emergency Medicine and Internal Medicine
12146 Rainwater Dr.
16 Eagle River, AK 99577
Phone: (907) 696-7386

17 Dr. Levy has produced a written report and has been deposed. He is expected to
18 testify regarding the medical issues, information, and opinions that were included in his report
19 and/or that were raised during his deposition including his education, training, and experience
20 as a physician, his knowledge and experience regarding the treatment, transfer, and emergency

1 medevac of patients like Mr. Allen, his knowledge and experience regarding the symptoms,
2 condition, assessment, diagnosis, and treatment in the emergency care setting of patients with
3 chronic pain and patients suspected as having a subarachnoid hemorrhage, his review of Mr.
4 Allen's medical records and chronic pain history, his opinions regarding the assessment and
5 treatment of Mr. Allen at ANMC on April 19, his assessment and opinions regarding Mr.
6 Allen's symptoms, condition, catastrophic SAH and fatal outcome on April 19, and his
7 chronology and timeline for Mr. Allen's likely diagnosis, treatment, medevac, and unfavorable
8 prognosis as a patient with a SAH in Anchorage, Alaska in 2003.

9 7. Dr. Ronald F. Shallat (Expert witness)
10 Neurosurgeon
11 33 Evergreen Drive
12 Orinda, CA 94563
13 Phone: (925) 254-6627

14 Dr. Shallat has produced a written report and has been deposed. He is expected
15 to testify regarding the medical issues, information, and opinions that were included in his
16 report and/or that were raised during his deposition including his education, training, and
17 experience as a physician and neurosurgeon, his knowledge and experience regarding the
18 symptoms, condition, diagnosis, treatment, and outcomes for patients with a subarachnoid
19 hemorrhage, his review of Mr. Allen's medical records and chronic pain history, his
20 assessment and opinions regarding Mr. Allen's symptoms and condition at ANMC and his
catastrophic SAH and fatal outcome on April 19, his opinions regarding Mr. Allen's likely
unfavorable outcome as a patient with a SAH in Anchorage, Alaska in 2003.

- 1 8. Diane Duntze, R.N., A.N.P. (Expert witness)
2 Advanced Nurse Practitioner
3 HC01 Box 335
4 Gakona, AK 99586
5 Phone: (907) 822-5214

6 ANP Duntze has produced a written report and has been deposed. She is
7 expected to testify regarding the medical issues, information, and opinions that were included
8 in her report and/or that were raised during her deposition including her education, training,
9 and experience as a nurse and Advance Nurse Practitioner, her knowledge and experience
10 regarding the symptoms, condition, diagnosis, and treatment in the emergency care setting of
11 patients with chronic pain and patients suspected as having a subarachnoid hemorrhage, her
12 review of Mr. Allen's medical records and chronic pain history, and her opinions regarding
13 Mr. Allen's assessment and treatment at ANMC on April 19, 2003.

- 14 9. Dr. Richard A. Rubenstein (Expert Witness)
15 Neurologist
16 3220 Blume Drive, Suite 151
17 Richmond, CA 94806
18 Phone: (415) 924-1340

19 Dr. Rubenstein has produced a written report and has been deposed. He is
20 expected to testify regarding the medical issues, information, and opinions that were included
in his report and/or that were raised during his deposition including his education, training, and
experience as a physician and neurologist, his knowledge and experience regarding the
symptoms, condition, diagnosis, treatment, and outcomes for patients with a subarachnoid
hemorrhage, his review of Mr. Allen's medical records and chronic pain history, his opinions
regarding the assessment and treatment of Mr. Allen at ANMC on April 19, his opinions

1 regarding Mr. Allen's symptoms and condition at ANMC and his catastrophic SAH and fatal
2 outcome on April 19, and his opinions regarding Mr. Allen's likely unfavorable outcome as a
3 patient with a SAH in Anchorage, Alaska in 2003.

4 10. Paul Taylor (Expert Witness)
Economist
2245 Penrose Lane
5 Fairbanks, AK 99709
6 Phone: (907) 455-6037

7 Mr. Taylor has produced a written report. He is expected to testify regarding the
8 opinions, information, and calculations in his report regarding the estimated past and future
9 economic losses for Mr. Allen and the past and future Social Security benefit payments for
10 Mrs. Allen and Presley Allen.

11 **Witnesses That May Be Called At Trial**

12 1. Dr. Susan Dietz
13 Providence Alaska Medical Center
3200 Providence Drive
14 Anchorage, AK 99508
Phone: (907) 261-3111
15 Defendant expects that it will question Dr. Dietz when she is called as a witness
16 during Plaintiff's case-in-chief. She is expected to testify regarding her examination and
17 treatment of Mr. Allen at Providence Alaska Medical Center on April 19, her contact with Mrs.
18 Allen, and her entries in the Providence medical records.
19
20

- 1 2. Dr. Loretta Lee
2 Providence Alaska Medical Center
3 3200 Providence Drive
4 Anchorage, AK 99508
5 Phone: (907) 261-3111

6 Defendant expects that it will question Dr. Lee when she is called as a witness
7 during Plaintiff's case-in-chief. She is expected to testify regarding her examination and
8 treatment of Mr. Allen at Providence Alaska Medical Center on April 19, her contact with Mrs.
9 Allen, and her entries in the Providence medical records.

- 10 3. Dr. Maria Freeman
11 ANMC Family Medicine Clinic
12 4315 Diplomacy Drive
13 Anchorage, AK 99508
14 Phone: (907) 563-2662

15 Defendant may call Dr. Freeman to testify regarding Mr. Allen's chronic pain
16 history and his contacts and medical records at ANMC's Family Medicine Clinic in 2000 to
17 2003 and his entry into the ANMC Chronic Pain Program in December 2002 and January
18 2003.

- 19 4. Dr. Tim Scheffel
20 ANMC UCC Medical Director
 4315 Diplomacy Drive
 Anchorage, AK 99508
 Phone: (907) 563-2662

 Dr. Scheffel has been deposed and he may be called to testify regarding the
general subjects and medical issues that he was questioned about at his deposition, including
his medical training and experience, his duties and experience as ANMC Medical Director for
the Urgent Care Clinic, the staffing and operation of ANMC's urgent care clinic, the intake,

1 triage, examination, and treatment of patients in the urgent care clinic, his knowledge and
2 experience regarding ANP Fearey's skills and work at the ANMC urgent care clinic, and the
3 information in the ANMC medical records regarding Mr. Allen's intake, triage, exam, and
4 assessment on April 19, 2003.

5 5. Any witnesses called by Plaintiff.

6 **Witnesses That Are Unlikely To Be Called At Trial**

7 1. Dr. Eric Kohler
ANMC Neurosurgeon
4315 Diplomacy Drive
8 Anchorage, AK 99508
9 Phone: (907) 563-2662

10 Dr. Kohler would have information regarding the diagnostic and treatment
11 procedures available at ANMC in 2003 and the practices and procedures at ANMC for the
12 treatment of patients suspected of having a subarachnoid hemorrhage or aneurysm, including
13 the transfer and medevac of patients to other medical facilities.

14 2. Flossie Spencer or Jeff Ferris
ANMC Medical Records personnel
4315 Diplomacy Drive
15 Anchorage, AK 99508
Phone: (907) 563-2662

16 ANMC medical records' personnel would be able to authenticate ANMC's
17 medical records.

XII. EFFECT OF THIS ORDER

When finalized, this Proposed Pretrial Order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

REDACTED SIGNATURE

DATED: 06/10/2007

Hon. James K. Singleton
United States District Court Judge

CERTIFICATE OF SERVICE

I certify that on the 7 June 2007, a copy of the foregoing Joint Proposed Pretrial Order was served electronically on:

Gary M. Guarino
Assistant U.S. Attorney
Office of the U. S. Attorney
222 W. 7th Ave., #9
Anchorage, AK 99513-7567

/s/ Donna J. McCready

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